

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ALLEN TONY DAVIS,

Plaintiff,

v.

Case No. 08-CV-561

SGT. JENKINS, DEPUTY DRAFER,
DEPUTY CAYA, and DEPUTY MADNGAL,

Defendants.

ORDER

On July 1, 2008, *pro se* plaintiff Allen Tony Davis, a prisoner at the Green Bay Correctional Institution, filed a complaint pursuant to 42 U.S.C. § 1983, alleging that his civil rights were violated. The plaintiff filed a motion to proceed *in forma pauperis*, which the court resolved in an order dated July 18, 2008.

The plaintiff's motion to proceed *in forma pauperis* was denied because he "has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(g). The plaintiff did not show he was "under imminent danger of serious physical injury" and, therefore, cannot proceed under the *in forma pauperis* statute. He failed to pay the full amount of the \$350.00 filing fee to the clerk of court within twenty days of the July 18, 2008 order. As a result, the court will dismiss his case. Nevertheless, he incurred the \$350.00 filing fee by filing his complaint. *Newlin v. Helman*, 123 F.3d 429, 436-37 (7th Cir. 1997) (overruled on other grounds by, *Walker*

v. O'Brien, 216 F.3d 626 (7th Cir. 2000) and *Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000)).

Accordingly,

IT IS ORDERED that this action is hereby **DISMISSED** without prejudice for failure to prosecute.

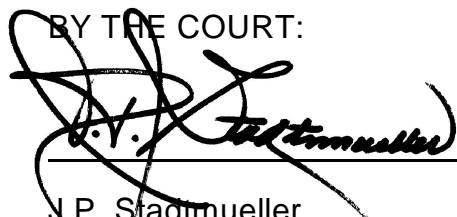
IT IS FURTHER ORDERED that the Clerk of Court enter judgment accordingly.

IT IS FURTHER ORDERED that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from plaintiff's prison trust account the \$350.00 balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the clerk of the court each time the amount in the account exceeds \$10.00 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS FURTHER ORDERED that a copy of this order be sent to the warden of the institution where the plaintiff is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin, this 30th day of October, 2008.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge